

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

BMO HARRIS BANK N.A.,

Plaintiff,

v.

Case No. 18-C-1331

VALLEY TRUCKING, LLC and  
JEFFREY TRUDELL,

Defendants.

---

**DECISION AND ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

---

Plaintiff BMO Harris Bank N.A. (BHB), assignee of GE Capital Commercial Inc. and GE Capital US Holdings, Inc., filed the instant action against Defendants Valley Trucking, LLC and Jeffrey Trudell, alleging breach of contract claims under Wisconsin law. In particular, BHB asserts that Valley Trucking defaulted on the terms of seven loan agreements and that Trudell, as personal guarantor of Valley Trucking's debts, defaulted on his contractual obligations by failing to pay the full amount of those debts. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. On May 14, 2019, BHB moved for summary judgment. To date, Defendants did not respond to the motion and have not requested an extension of time to do so.

The local rules of this district provide that the failure to file a brief in opposition to a motion is sufficient grounds to grant the motion. Civil L.R. 7(d) (E.D. Wis.). Defendants' failure to respond to the motion is grounds in itself to grant the motion. For this reason, and also because it is clear BHB is entitled to judgment as a matter of law, BHB's motion for summary judgment will be granted and the case dismissed.

## BACKGROUND

Because Defendants did not respond to the motion for summary judgment, BHB's proposed findings of fact (Dkt. No. 13-4) are deemed admitted for the purposes of summary judgment. *See Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003) ("[F]ailure to respond by the nonmovant as mandated by the local rules results in an admission."); Civil L.R. 56(b)(4) ("The Court will deem uncontroverted statements of material fact admitted solely for the purpose of deciding summary judgment."). BHB is an assignee of GE Capital Commercial Inc. and GE Capital US Holdings, Inc.

On December 31, 2014, Valley Trucking entered into a Loan and Security Agreement (Agreement 1) with GE Capital Commercial Inc. for the purchase of a 2015 Western Star Trucks Inc. 4700 SB Day Cab in the total amount of \$162,131.40. Pursuant to Agreement 1, Valley Trucking agreed to make monthly payments for the purchase of the equipment beginning on or about February 1, 2015, for a term of 60 months. Valley Trucking was obligated to pay a minimum monthly payment of \$2,702.19 and would default under the loan if it failed to pay when due any amount owed by it to the lender. The agreement was later assigned to BHB. On November 28, 2017, Valley Trucking entered into a Modification Agreement (Modification 1) with BHB for Agreement 1. Pursuant to the modification agreement, Valley Trucking agreed to pay the balance of Agreement 1 as follows:

Payment Amount	Number of Payments	Payment Date
\$2,702.19	1	10/15/2017
\$0.00	3	11/15/2017
\$2,715.92	27	02/15/2018

On February 15, 2018, Valley Trucking defaulted under the terms of Modification 1 by failing to make the minimum monthly payments.

On February 22, 2017, Valley Trucking entered into a Loan and Security Agreement (Agreement 2) with BHB in the total amount of \$573,181.92 for the purchase of three 2016 Freightliner Cascadia Series tractors. Pursuant to Agreement 2, Valley Trucking agreed to make minimum monthly payments of \$7,960.86 for the purchase of this equipment beginning on April 9, 2017, for a term of 72 months. Under the agreement, Valley Trucking would be in default under the loan if it failed to pay when due any amount owed by it to the lender. Valley Trucking entered into a Modification Agreement (Modification 2) with BHB for Agreement 2 on November 28, 2017. Pursuant to Modification 2, Valley Trucking agreed to pay the balance of Agreement 2 as follows:

<b>Payment Amount</b>	<b>Number of Payments</b>	<b>Payment Date</b>
\$0.00	3	11/09/2017
\$8,160.89	65	02/09/2018

On May 9, 2018, Valley Trucking defaulted under the terms of Modification 2 by failing to make minimum monthly payments.

On April 13, 2017, Valley Trucking entered into a Loan and Security Agreement (Agreement 3) with BHB in the total amount of \$55,376.40 for the purchase of a 2018 Mobile Dyno 224x Dynojet trailer. Pursuant to Agreement 3, Valley Trucking agreed to make minimum monthly payments of \$922.94 for the purchase of this trailer beginning on June 1, 2017, for a term of 60 months. Valley Trucking would be in default in the event it failed to pay when due any amount owed by it to BHB under the agreement. On November 28, 2017, Valley Trucking entered into a

Modification Agreement (Modification 3) with BHB for Agreement 3. Pursuant to Modification 3, Valley Trucking agreed to pay the balance of Agreement 3 as follows:

<b>Payment Amount</b>	<b>Number of Payments</b>	<b>Payment Date</b>
\$0.00	3	11/01/2017
\$945.62	55	02/01/2018

On June 1, 2018, Valley Trucking defaulted under the terms of Modification 3 by failing to make the minimum monthly payment.

On May 23, 2013, Valley Trucking entered into a Loan and Security Agreement (Agreement 4) with GE Capital Corporation, which was later assigned to BHB, in the total amount of \$78,782.76 for the purchase of two 2014 Hyundai 48' dry vans. Pursuant to Agreement 4, Valley Trucking agreed to make minimum monthly payments of \$937.89 for the purchase of these vans beginning on July 1, 2013, for a term of 84 months. Pursuant to the agreement, Valley Trucking would be in default under the loan if it failed to pay when due any amount owed by it to the lender. On November 27, 2017, Valley Trucking entered into a Modification Agreement (Modification 4) with BHB for Agreement 4. Pursuant to Modification 4, Valley Trucking agreed to pay the balance of Agreement 4 as follows:

<b>Payment Amount</b>	<b>Number of Payments</b>	<b>Payment Date</b>
\$0.00	3	11/01/2017
\$959.08	32	02/01/2018

On March 1, 2018, Valley Trucking defaulted under the terms of Modification 4 by failing to make the minimum monthly payment.

On December 30, 2014, Valley Trucking entered into a Loan and Security Agreement (Agreement 5) with GE Capital Commercial Inc., which was later assigned to BHB, in the total amount of \$162,131.40 for the purchase of a 2015 Western Star Trucking Inc. 4700 SB Daycab. Under the agreement, Valley Trucking agreed to make minimum monthly payments of \$2,702.19 for the purchase of this equipment beginning on February 1, 2015, for a term of 60 months. Valley Trucking would be in default under the loan if it failed to pay when due any amount owed by it to the lender. On November 28, 2017, Valley Trucking entered into a Modification Agreement (Modification 5) with BHB for Agreement 5. Under the modification agreement, Valley Trucking agreed to pay the balance of Agreement 5 as follows:

<b>Payment Amount</b>	<b>Number of Payments</b>	<b>Payment Date</b>
\$2,702.19	1	10/15/2017
\$0.00	3	11/15/2017
\$2,751.92	27	02/15/2018

On February 15, 2018, Valley Trucking defaulted under the terms of Modification 5 by failing to make the minimum monthly payment.

On June 26, 2013, Valley Trucking entered into a Loan and Security Agreement (Agreement 6) with GE Capital Corporation, which was later assigned to BHB, in the total amount of \$118,373.64 for the purchase of three 2014 Hyundai 48' Dry Vans. Pursuant to Agreement 6, Valley Trucking agreed to make minimum monthly payments of \$1,409.21 for the purchase of this equipment beginning on August 1, 2013, for a term of 84 months. Valley Trucking would be in default under the loan if it failed to pay when due any amount owed by it to the lender. On November 27, 2017, Valley Trucking entered into a Modification Agreement (Modification 6) with

BHB for Agreement 6. Pursuant to Modification 6, Valley Trucking agreed to pay the balance of Agreement 6 as follows:

<b>Payment Amount</b>	<b>Number of Payments</b>	<b>Payment Date</b>
\$0.00	3	11/01/2017
\$1,441.14	33	02/01/2018

On March 1, 2018, Valley Trucking defaulted under the terms of Modification 6 by failing to make minimum monthly payments.

On December 18, 2014, Valley Trucking entered into a Loan and Security Agreement (Agreement 7) with GE Capital Commercial Inc., which was later assigned to BHB, in the total amount of \$182,164.20 for the purchase of a 2014 Western Star Trucks Inc. 4900 SA Sleeper. Pursuant to Agreement 7, Valley Trucking agreed to make minimum monthly payments of \$3,036.07 for the purchase of this equipment beginning on February 1, 2015, for a term of 60 months. Valley Trucking would be in default under the loan if it failed to pay when due any amount owed by it to the lender. On November 28, 2017, Valley Trucking entered into a Modification Agreement (Modification 7) with BHB for Agreement 7, in which Valley Trucking agreed to pay the balance of Agreement 7 as follows:

<b>Payment Amount</b>	<b>Number of Payments</b>	<b>Payment Date</b>
\$0.00	3	11/15/2017
\$3,091.92	27	02/15/2018

On May 15, 2018, Valley Trucking defaulted under the terms of Modification 7 by failing to make the minimum monthly payment.

Trudell executed multiple Continuing Guaranties for Agreements 1 through 7 and personally and conditionally guaranteed Valley Trucking's performance on all of its obligations to BHB, then existing or thereafter incurred. Pursuant to the Guaranties, Trudell agreed to the prompt payment and performance of all obligations, liabilities, and undertakings of Valley Trucking to BHB. Trudell, as personal guarantor of Valley Trucking's debts, failed to cure Valley Trucking's default.

BHB sustained damages in the amount of \$532,286.94 due to Valley Trucking's breach and default of the Agreements and Trudell's breach and default of the Guaranties. The equipment purchased through Agreements 1 through 7 was subsequently surrendered to BHB. Equipment 1, 2, 4, 5, and 6 were sold in a commercially reasonable manner, and the net proceeds from the sales were applied to the total deficiency balance owed by Valley Trucking to BHB. Upon the sale of Equipment 3 and 7, net proceeds will be applied to the remaining deficiency balance owed by Valley Trucking to BHB.

### **LEGAL STANDARD**

Summary judgment is appropriate when the movant shows that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In deciding a motion for summary judgment, the court must view the evidence and make all reasonable inferences that favor them in the light most favorable to the non-moving party. *Johnson v. Advocate Health & Hosps. Corp.*, 892 F.3d 887, 893 (7th Cir. 2018) (citing *Parker v. Four Seasons Hotels, Ltd.*, 845 F.3d 807, 812 (7th Cir. 2017)). The party opposing the motion for summary judgment must "submit evidentiary materials that set forth specific facts showing that there is a genuine issue for trial." *Siegel v. Shell Oil Co.*, 612 F.3d 932, 937 (7th Cir. 2010) (citations omitted). "The nonmoving party must do more than simply show that there is some metaphysical doubt as to the

material facts.” *Id.* Summary judgment is properly entered against a party “who fails to make a showing to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Austin v. Walgreen Co.*, 885 F.3d 1085, 1087–88 (7th Cir. 2018) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

### ANALYSIS

In this case, BHB claims Valley Trucking and Trudell breached their contracts. Specifically, BHB asserts that Valley Trucking defaulted on the terms of seven loan agreements and that Trudell defaulted on his contractual obligations by failing to pay the full amount of Valley Trucking’s debts as the personal guarantor of those debts. In the state of Wisconsin, the elements of a cause of action for breach of contract are (1) the formation of a contract between the plaintiff and the defendant; (2) “failure of the defendant to do what it undertook to do;” and (3) resulting damages. *See Brew City Redevelopment Grp., LLC v. Ferchill Grp.*, 2006 WI App 39, ¶ 11, 289 Wis. 2d 795, 714 N.W.2d 582. As to Valley Trucking’s breach of the seven agreements, Valley Trucking’s answer admits to the formation of multiple contracts between BHB and Valley Trucking which allowed Valley Trucking to purchase certain equipment with BHB’s funds. *See* Dkt. No. 5 at 1. Valley Trucking does not dispute that it failed to perform its end of the agreements by failing to make the required monthly payments on the agreements and that its failure to make payments has resulted in a monetary loss for BHB.

Similarly, Trudell admits in his answer to entering into valid and enforceable contracts in the form of the Continuing Guaranties. *Id.* In addition, there is no dispute that Trudell breached the Guaranties by failing to cure Valley Trucking’s defaults by making the specified payments in the agreements and that BHB sustained damages in the amount of \$532,286.94 as a result. In short,



BHB has satisfied all of the elements of breach of contract under Wisconsin law, and there is no genuine dispute as to any material fact that may affect the outcome of this lawsuit. Accordingly, summary judgment in favor of BHB is appropriate.

### **CONCLUSION**

For these reasons, BHB's motion for summary judgment (Dkt. No. 13) is **GRANTED**. BHB is entitled to judgment in the amount of \$532,286.94. The Clerk is directed to enter judgment accordingly.

**SO ORDERED** this 24th day of June, 2019.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court